

Memorandum

Date: June 30, 1998

To : Mr. Ed King, Chief
Fuel Taxes Division MIC: 33

From : Janet Vining
Legal Division

Subject: Credit Card Sales

I am writing in response to your June 26, 1998 memorandum to Mary Armstrong concerning the sale of diesel fuel using the _____, credit card. For the reasons set forth below, we conclude that _____ is the ultimate vendor of diesel fuel sold using the _____ credit card for use in a farm for farming purposes or in an exempt bus operation, and may file a claim for refund of the diesel fuel tax paid on such fuel.

As described in the documents attached to your memorandum, _____ has entered into a contract with _____ whereby _____ will, among other things, accept the credit card for purchases at _____-operated service stations. Paragraph 5 of the Company Operated Marketing Agreement between _____ and _____ (Exhibit G to the Proprietary Fleetcard Network Associate Agreement) states:

_____ will purchase motor fuels from _____ and title to such fuel shall pass to _____ as such fuels pass the nozzle of the retail fuel pump into the _____ customer's vehicle at _____ location

_____ also contracts for its credit card to be accepted at the service stations of independent dealers that sell _____ products. _____ enters into an agreement with each individual service station owner which contains a similar clause indicating that _____ will purchase motor fuels from the service station operator, and title to the fuel will pass to _____ as the fuel passes the nozzle of the retail fuel pump in the customer's vehicle at the service station location.

July 1, 1998

2

Pursuant to the contracts described above, either [redacted] or the service station operator handling [redacted] products sells diesel fuel to [redacted], and [redacted] then sells the fuel to the user of the fuel. Therefore, [redacted] is the "ultimate vendor" of such fuel, as that term is defined in Revenue and Taxation Code Section 60036, when the fuel is sold for use on a farm for farming purposes or for use in an exempt bus operation. [redacted] is entitled to the ultimate vendor refund provided for in Revenue and Taxation Code Section 60502, and must register with the Board as an ultimate vendor. Each claim for refund must be supported by documentation showing that tax was paid on the diesel fuel.

If you have further questions concerning this matter we will be happy to discuss them with you.

JV:lm

cc: Mr. Bob Frank MIC: 30
Mr. Doug Shepherd MIC: 30
Mr. Lou Feletto MIC: 30
Ms. Mary Armstrong
Ms. Judy Nelson